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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re PATENT APPLICATION OF

Jürgen ADAMY et al.

Serial No.: 09/485,445

Filed: February 11, 2000

For: CONTROL UNIT COMPRISING
DYNAMIC FUZZY LOGIC CONTROL
ELEMENTS, TEMPORALLY DISCRETE

Attorney Docket Number: 32221-153110 RK

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) Group Art Unit: 2121
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) Examiner: Starks, Wilbert L.
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) Confirmation No. 1928
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) U.S.P.T.O. Customer No.:
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) 26694
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**Response to Decision on Petition to Withdraw
Holding of Abandonment under 37 C.F.R. § 1.81**

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

This paper is submitted in response to the Office's Decision on the Petition to Withdraw Holding of Abandonment. The SPE has requested clarification of certain facts set forth in the Petition, which we discuss below. Pursuant to 37 CFR § 1.181(a), Applicants petition the Commissioner to review the Decision and reissue a Notice of Allowance for the above-identified case.

In the event that any fees are due, please charge our Deposit Account No. 22-0261 and notify the Applicant's attorney. Additionally, authorization is hereby provided to charge the Issue Fee to our Deposit Account No. 22-0261 in order to comply, if necessary, with the requirements of 37 CFR § 1.137. Again, notification of Applicant's attorney is respectfully requested.

The Decision states that the proof required in support of the Petition fails to comply with the MPEP because Kavita Lepping is not of record in the present case. Mr. Robert Kinberg, the

attorney of record and the undersigned, believed in good faith that at the time of filing the Petition, the Venable customer number, which appears on the majority of submissions in the file wrapper, was associated with this case. As Ms. Lepping is listed under the customer number, Mr. Kinberg also believed that Ms. Lepping was of record. The undersigned further asserts that Ms. Lepping worked under his direction, that the contents of the file wrapper and the docket records were searched, and that the search produced no record of the Notice of Allowance.

Regarding the phone conversation with the Examiner on June 2, 2004, the undersigned wishes to clarify that it was not his intention for the application to go abandoned. The Examiner contacted the undersigned, explaining that the case had been returned to him from the Issue Branch due to a technicality that he wished to correct with an Examiner's Amendment. The undersigned promptly inquired as to the date of the Notice of Allowance, as one had not yet been received. The Examiner then informed Mr. Kinberg that the Notice was issued on Dec 2, 2002. Mr. Kinberg responded that the application would be considered abandoned by statute because the statutory period for paying the issue fee had already expired and, in that there was no record of a Notice of Allowance in the case, the issue fee had not been paid. The undersigned did not wish for the Application to go abandoned; he was merely stating that the application was effectively abandoned, and that an Examiner's amendment would be pointless. (The content of the Amendment was never discussed.) The Examiner, realizing the oversight, issued a Notice of Abandonment on June 9, 2004. The Notice was received on June 10, 2004, and the Rule 181 Petition promptly filed on July 2, 2004.

As evidence of non-receipt of the Notice of Allowance, Applicant's Petition included the firm's docket report dated Saturday, March 1 to Monday March 3, 2003 (Attachment 1 of Petition), a copy of the USPTO incoming mail log from Monday, December 2, 2002 through Friday December 13, 2002 (Attachment 2 of Petition), and an affidavit of Patent Docketing

Coordinator, Carolyn Hopkins detailing the docketing procedures (Attachment 3 of Petition). These documents set forth the Venable procedures that are strictly adhered to during the course of business, and show that if the Notice of Allowance was received, it would appear on the mail log and the docket. Applicants believe that this evidence supports their assertion that the Notice was lost en route to Applicants, not after receipt.

Applicants also wish to emphasize their diligence in prosecuting the application. During the pendency of the application, Applicants promptly responded to USPTO correspondence and filed status requests to remain apprised as to the progress of the application. Less than one month after receiving the Notice of Abandonment, Applicants filed the Petition under Rule § 1.181. After filing, Applicants contacted the PTO on multiple occasions to monitor Petition status. Now, Applicants respond to the Decision just over one week after its mailing date.

In light of the events that have transpired in the case, coupled with the diligence of Applicants in prosecuting the application, it is respectfully requested that a Decision granting the Petition be promptly issued.

Respectfully submitted,

Date: February 16, 2005



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